

MONTANA LEGISLATIVE HISTORY

Chapter 263 1997

Bill H _____ S 266 Original bill & history ✓c

H. Committee on Bus. Labor

Hearing Date(s) _____ c

3/28 ✓c

_____ c

_____ c

Date Out 3/28 ✓c

S. Committee on Judiciary

Hearing Date(s) _____ c

2/11 ✓c

2/13 ✓c

2/17 ✓c

2/18 ✓c

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendant information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

RETURNED TO SENATE
 4/08 SIGNED BY PRESIDENT
 4/08 SIGNED BY SPEAKER
 4/09 TRANSMITTED TO GOVERNOR
 4/11 SIGNED BY GOVERNOR
 CHAPTER NUMBER 240
 EFFECTIVE DATE: 10/01/97

SB 266 INTRODUCED BY DEVLIN LC0712 DRAFTER: MALY

ESTABLISH SUBROGATION RIGHTS IN MOTOR VEHICLE LIABILITY POLICIES

2/03	INTRODUCED		
2/03	FIRST READING		
2/03	REFERRED TO JUDICIARY		
2/11	HEARING		
2/18	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/21	2ND READING PASSED	50	0
2/22	3RD READING PASSED	48	2

	TRANSMITTED TO HOUSE		
3/03	FIRST READING		
3/03	REFERRED TO BUSINESS & LABOR		
3/28	HEARING		
4/03	COMMITTEE REPORT—BILL CONCURRED		
4/04	2ND READING CONCURRED	98	0
4/05	3RD READING CONCURRED	97	3

RETURNED TO SENATE
 4/10 SIGNED BY PRESIDENT
 4/10 SIGNED BY SPEAKER
 4/11 TRANSMITTED TO GOVERNOR
 4/14 SIGNED BY GOVERNOR
 CHAPTER NUMBER 263
 EFFECTIVE DATE: 10/01/97

SB 267 INTRODUCED BY KEATING, ET AL. LC0147 DRAFTER: EVERTS

REVISE THE DISPOSITION OF THE METALLIFEROUS MINES LICENSE TAXES

2/03	INTRODUCED
2/03	FIRST READING
2/03	REFERRED TO FINANCE & CLAIMS
2/03	FISCAL NOTE REQUESTED (EXTENSION GRANTED FOR COMPLETION)
2/12	FISCAL NOTE RECEIVED
2/13	FISCAL NOTE PRINTED
2/17	HEARING
3/14	HEARING
3/21	TABLED IN COMMITTEE
4/05	MISSED DEADLINE FOR 71ST DAY TRANSMITTAL DIED IN COMMITTEE

SB 268 INTRODUCED BY KEATING, ET AL. LC1057 DRAFTER: PETESCH

ELIMINATE THE MONTANA STATE LOTTERY

2/03	INTRODUCED
2/03	FIRST READING
2/03	REFERRED TO STATE ADMINISTRATION
2/03	FISCAL NOTE REQUESTED
2/08	FISCAL NOTE RECEIVED
2/08	FISCAL NOTE PRINTED

1
2 INTRODUCED BY Sen. [Signature] Senate BILL NO. 266

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING SUBROGATION RIGHTS FOR AN INSURER
5 AGAINST A JUDGMENT OR RECOVERY RECEIVED BY AN INSURED PERSON FROM A LIABLE THIRD
6 PARTY; PROVIDING A PROCEDURE FOR NOTICE OF AN INTENT TO BRING A CLAIM AGAINST A THIRD
7 PARTY; AUTHORIZING AN INSURER'S RIGHT OF ACTION AGAINST A THIRD PARTY; AND AMENDING
8 SECTION 33-23-203, MCA."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

1
2 NEW SECTION. Section 1. Subrogation rights. An insurance policy that is subject to Title 33,
3 chapter 22, 23, or 30, may, to the extent necessary for the reimbursement of damages or benefits paid to
4 or on behalf of the insured person and pursuant to [section 2], provide that the insurer is entitled to
5 subrogation against a judgment or recovered sum received by the insured person from a third party whose
6 wrongful act or omission caused the injury that necessitated the payment of damages or benefits by the
7 insurer to or on behalf of its insured.

8
9 NEW SECTION. Section 2. Notice -- shared cost of third-party action -- limitation. (1) If an insured
0 person intends to institute a claim for damages against a third party, the insured person shall give the
1 insurer reasonable notice of that intention.

2 (2) The insured person may request that the insurer pay a proportionate share of the reasonable
3 costs of the third-party action, including attorney fees.

4 (3) An insurer may elect not to participate in the cost of the action, but in doing so the insurer
5 waives 50% of any amount resulting from the subrogation rights granted to the insurer in [section 1].

6
7 NEW SECTION. Section 3. Insurer's right of action. If an insured person does not initiate an action
8 for damages against a third party within the time period prescribed for the commencement of the cause of
9 action, the insurer may initiate an action against the third party to enforce the insurer's subrogation rights
0 within 12 months after the expiration of the period prescribed for the commencement of the insured

1 person's cause of action against the third party.

2
3 **Section 4.** Section 33-23-203, MCA, is amended to read:

4 **"33-23-203. Limitation of liability under motor vehicle liability policy.** (1) Unless a motor vehicle
5 liability policy specifically provides otherwise, the limits of insurance coverage available under ~~any such a~~
6 policy, including the limits of liability under uninsured motorist coverage, must be determined as follows,
7 regardless of the number of motor vehicles insured under the policy:

8 (a) the limit of insurance coverage available for any one accident is the limit specified for the motor
9 vehicle involved in the accident;

10 (b) if no motor vehicle insured under the policy is involved in the accident, the limit of insurance
11 coverage available for any one accident is the highest limit of coverage specified for any one motor vehicle
12 insured under the policy; and

13 (c) the limits of coverage specified for each motor vehicle insured under the policy may not be
14 added together to determine the limit of insurance coverage available under the policy for any one accident.

15 (2) A motor vehicle liability policy may also provide for other reasonable limitations, exclusions,
16 ~~or~~ reductions of coverage ~~which~~ , or subrogation clauses that are designed to prevent duplicate payments
17 for the same element of loss under the motor vehicle liability policy or under another casualty or disability
18 policy or a health service corporation contract that provides coverage for an injury that necessitates
19 damages or benefit payments."

20
21 **NEW SECTION. Section 5. Codification instructions.** (1) [Sections 1 and 2] are intended to be
22 codified as an integral part of Title 33, chapter 23, part 1, and the provisions of Title 33, chapter 23, part
23 1, apply to [sections 1 and 2].

24 (2) [Section 3] is intended to be codified as an integral part of Title 33, chapter 22, part 16, and
25 the provisions of Title 33, chapter 22, part 16, apply to [section 3].

26 -END-

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BRUCE D. CRIPPEN, on February 11, 1997, at 9:00 A.M., in Senate Judiciary Room.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Judy Keintz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 303, 2/7/97
✓ SB 266, 2/5/97
SB 289, 2/6/97
Executive Action: SB 230

HEARING ON SB 303

Sponsor: SEN. BILL WILSON, SD 22, Great Falls

Proponents: Brenda Nordlund, Department of Justice
Mark Staples, Montana Tavern Association
Tom Hopgood, Montana Beer and Wine Wholesalers
Elmer Fauth, Citizen

Opponents: None

CHAIRMAN CRIPPEN asked if there were variations among the 34 states which had these interlocking devices?

SEN. WILSON stated there were a lot of variations. Each state has a varying degree of legislation in this regard. A judge in Ravalli County uses interlocks in dealing with offenders. That is not prohibited in law. This would give the judge some guidelines. The court still has discretion.

On page 8, line 23, there is language stating that in addition to other punishment "when an offender is convicted of second or subsequent offense or the offender's blood alcohol concentration at the time of arrest is 0.18% or greater, and if the court determines that approved ignition interlock devices are reasonably available. . ."

SEN. GROSFIELD asked whether this voice detected drugs?

Ms. Nordlund stated that it did not.

SEN. GROSFIELD asked if there was any data regarding drivers with ignition interlock systems switching to drugs instead?

Ms. Nordlund stated she was not aware of offenders changing their substance of choice as a result of ignition interlocks.

Closing by Sponsor:

{Tape: 1; Side: a; Approx. Time Count: 9:34; Comments: .}

SEN. WILSON stated the cost would be minimal. If we are able to stop individuals from becoming repeat DUI offenders, there will be a cost savings. This is not a cure all. It is simply an innovative approach to help the problem. It is important for a DUI offender to have a constant reminder of his problem. This is a good rehabilitation measure.

HEARING ON SB 266

Sponsor: SEN. GERRY DEVLIN, SD 2, Terry

Proponents: Roger McGlenn, Director of the Independent Insurance Agents Associations of Montana
Tom Clark, Independent Insurance Agent
Tom Grau, Century Insurance
Jerry Driscoll, Employee Benefit Management Systems
Jackie Lenmark, American Insurance Assoc. and Alliance of American Insurers
Greg Van Horssen, State Farm Insurance Co.

Opponents: Rus Hill, Montana Trial Lawyers Association

Opening Statement by Sponsor:

{Tape: 1; Side: a; Approx. Time Count: 9:37; Comments: .}

SEN. GERRY DEVLIN, SD 2, Terry, introduced SB 266. This bill allows for the liable party in an insurance matter to recover damages. The Supreme Court has stated that had the legislature been more clear in their determination in this area of law, they would have ruled differently on cases before them. This bill especially deals with medical bills.

Proponents' Testimony:

{Tape: 1; Side: a; Approx. Time Count: 9:39; Comments: .}

Roger McGlenn, Director of the Independent Insurance Agents Associations of Montana, commented that several Supreme Court cases have created increasing problems for insurance agents and their clients, the Montana insurance consumer.

Tom Clark, Independent Insurance Agent, stated his focus was on injuries arising from automobile accidents. Those were the circumstances which were involved in the Allstate v. Reglar and Youngblood v. American States cases which address Section 4 of this bill.

The Reglar decision, which disallowed subrogation of automobile medical payments, occurred in 1981 and did not have an immediate affect on claim settlement practices of insurers. One company began to refer the injured third parties to the medical payments coverage of their own insurance policy. When one began that practice, the remainder followed.

Insurance follows the principle of indemnity and indemnity says that an injured person should be made whole but should not be able to profit or be unjustly enriched from their injury. The end result of avoiding these duplicate payments of the same medical bills, has resulted in significant added costs to the injury claims handling process.

They had a claim wherein their insured's car was struck by another person. The driver in the car in the rear was clearly at fault. A passenger in their insured's auto was injured. The insurer for the at-fault party told the injured passenger to turn in his medical bills to his insurance company under the medical payments coverage of the policy covering the automobile that they were occupying. This left two separate claims files open on the same accident. Two different insurance companies paid staff to handle this accident.

If the third party insurer includes the injured person's medical bills in their settlement with that person, bills already paid by another insurer, the result is unjust enrichment. Ultimately the insurance consumer ends up paying more than they should.

This bill would reaffirm the tort liability principle of the one at fault has to pay by allowing subrogation of medical bills paid by an insurance policy and it affirms the principle that people shouldn't be allowed to collect more than one time for the same medical expenses.

Tom Grau, Century Insurance, stated that the Supreme Court decision did not affect the marketplace very rapidly. In 1990 some of the companies began to direct his clients to their own coverage for recovery of medical payments before they would deal with them at all. They have had clients wherein the other company has taken care of their vehicle damage and still refused to deal with the client on their medical expenses.

{Tape: 1; Side: b; Approx. Time Count: 9:45; Comments: .}

Jerry Driscoll, Employee Benefit Management Systems, offered an amendment, EXHIBIT 3, which gives health insurance, under 2-18-902, the same rights of subrogation as the bill. They are a health insurance trust fund. In the case of an accident, they pay the medical and would like the right to go after the faulted party to recoup their medical benefits.

Jackie Lenmark, American Insurance Association and Alliance of American Insurers, stated they support this bill. The problem of duplicate and prompt payments has been of concern to the industry. They hope this bill will acknowledge the problems which have existed with claims management.

The theory of subrogation is based on the premise that the at-fault party should pay for an injury that he or she has caused. Subrogation is the theory by which an insurer steps into the shoes of its insured to recover those payments from the at-fault party.

This bill attempts to tie together the various lines of insurance which may be available for payment on a given claim to allow the at-fault party to be determined and to provide appropriate recovery to the injured person. This bill has been drafted with another bill in the House which delineates a particular order of payment so that this entire process can proceed in an more orderly manner. They support the amendment offered by Mr. Driscoll.

Greg Van Hoarsen, State Farm Insurance Company, rose in support of SB 266.

Opponents' Testimony:

{Tape: 2; Side: b; Approx. Time Count: 9:51; Comments: .}

Rus Hill, Montana Trial Lawyers Association, rose in opposition to SB 266. He stated that this bill concerns coverage which the consumer has purchased. A driver hit by a drunk driver could end

up with \$100,000 in medicals. This bill will give various insurance companies subrogation against the benefits that person has been paid even when that person has not come close to recovering his \$100,000 in medical bills.

The problem is caused by insurance companies fighting among themselves. When the driver recovers in the above judgement, anything he recovers is reduced by whatever other insurance companies have paid.

Sections 1 and 2, are not parallel to other existing provisions in the disability or health service chapters of that code. Section 2 is, word for word, language which exists in other chapters of the insurance code. Subsection (4) is the omitted language which exists elsewhere in the insurance code. The wording "The insurers right of subrogation granted in the previous sections may not be enforced until the injured insured has been fully compensated for his injuries," is missing from this bill.

This bill gives insurance companies a subrogation right when the innocent driver has not been paid enough to cover his medical bills. If the driver had \$100,000 in documented hospital bills and his insurance company has med pay coverage that it is contractually obligated to pay \$10,000, after his medical insurance company pays him, his insurance company can then be paid that \$10,000.

On page 1, line 21, the language regarding reasonable notice is a concern to them. In the case where an insured could not find the indigent driver who had caused an accident and therefore settled with the insurance company, his own insurance company decided they did not have to pay policy limits because the insured settled before notifying them. The Supreme Court said that if it is clear that you would have reached policy limits, the insured should not be denied the coverage they paid for. They also have a problem with the extension of the statute of limitations which is on page 1, line 30. Because this is put into the disability chapter, it is an across the board extension of the statute of limitations.

Questions From Committee Members and Responses:

{Tape: 1; Side: b; Approx. Time Count: 10:00; Comments: .}

SEN. STEVE DOHERTY, asked Mr. Driscoll how his amendment would protect an injured person?

Mr. Driscoll explained that if the insured has health insurance and there is an accident involved, the health insurance pays the medical bills while they pursue the car insurance coverage.

SEN. DOHERTY stated that every insurance policy he has ever seen contains a right of subrogation. He asked Mr. Driscoll if he was

aware of any health insurance policies which do not contain a right of subrogation.

Mr. Driscoll explained that they are a trust fund and the injured party signs a subrogation form which they use.

SEN. DOHERTY commented that he had never seen a casualty or a health insurance policy which did not include a right of subrogation.

Mr. McGlenn commented that it was his understanding that this was true prior to and sometime after the Rigler decision. Under an auto insurance policy, which included subrogation under the medical portions of the auto insurance policy, there was a Montana amendatory endorsement put on these policies to strike that subrogation because of the Rigler decision. They are primarily a property and casualty insurance company. Subrogation for medical policies are under a separate section.

SEN. DOHERTY commented that the bill deals with casualty policies. The amendments, which are in an entirely different section of law and would strike a current section of law dealing with health insurance policies. He asked SEN. DEVLIN if he would agree to the amendment?

SEN. DEVLIN stated he had no problem with the amendment.

SEN. HOLDEN asked Mr. Frank Cody, Deputy Insurance Company if he had any statistics on double payments on medical bills in Montana?

Mr. Cody stated he did not have those statistics. One of the things that they are concerned with is the instance of no companies paying where there is third-party liability. Insureds have been requested to take a second or third mortgage on their home so that they can pay their own bills before everything is resolved. There needs to be a limit of the right of subrogation against the insured until 100% of the economic damages are paid. If that was contained in this bill, they would be in favor of this bill.

CHAIRMAN CRIPPEN posed the scenario where an individual who has a passenger in the car is involved in an accident which is not his fault. The individual has \$100,000 bodily injury. The insurance company of the injured driver who was not at fault has \$10,000 medical coverage and pays that to the injured passenger. That is 20% of the total cost. The insurance carrier who has the medical would not then have the right of subrogation against the insurance company of the tortfeasor until after the remaining \$40,000 had been paid.

Mr. Cody stated that in the case where he was involved in an accident and was at fault. The person he hit, in this case CHAIRMAN CRIPPEN, would have a \$10,000 medical pay on his

policy. Mr. Cody was an uninsured motorist who was at fault. CHAIRMAN CRIPPEN incurred \$100,000 of medical damages and had a health insurance company which paid 80% of all covered charges. At this point he has received \$10,000 from his casualty insurance and then received \$80,000 from his health insurer. He would have received \$90,000, but had to pay out \$100,000. The current bill would allow his health insurer to go back to CHAIRMAN CRIPPEN and ask for the \$10,000 from his auto insurer to pay for claims which they paid for. He would then owe \$20,000 out of his own pocket. The health insurer should not receive pay until the full \$100,000 has been paid. Alternately, if Mr. Cody had insurance and the CHAIRMAN was able to collect \$25,000 from him, \$10,000 from the auto med pay insurer and \$80,000 from the health insurance company, CHAIRMAN CRIPPEN would have received \$115,000 on a \$100,000 bill. The health insurer then ought to be able to subrogate for that \$15,000.

Mr. Clark stated that the health insurer would not have a right against the auto med payments. Subrogation is a right against an at-fault third party. The automobile insurance policy of the injured person is not an at-fault third party. The alternate scenario is correct and in that the payments in excess of the total amount of medical bills should be subrogable. This bill as it is drawn does not reflect the same. He would not oppose an amendment which allowed the subrogation right to begin at the point where the individual was fully compensated for their economic loss.

SEN. DOHERTY felt that every health insurance company currently has the right of subrogation.

Mr. Hill stated that subrogation is not limited to the wrongdoer. On page 2, lines 16 through 19, there is language pertaining to subrogation clauses which are designed to prevent duplicate payments for the same element of loss under the motor vehicle liability policy or under another casualty or disability policy or health service corporation. That is contractual subrogation.

Closing by Sponsor:

{Tape: 1; Side: b; Approx. Time Count: 10:15; Comments: .}

SEN. DEVLIN stated that in the findings of Youngblood v. American States Insurance Company, the Court wrote, "Subrogation is a term of art and had the legislature intended to include subrogation in this statute, it could have easily provided the same." Evidently, the Court would not be opposed to subrogation if it had been written into legislation. He felt a person should be compensated 100%. He would like the insurance companies to go back to the responsible party to collect part of their losses.

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BRUCE D. CRIPPEN, on February 13, 1997, at 8:00 a.m, in Senate Judiciary Room, Room 325.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Judy Keintz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 318, 2/10/97
SB 314, 2/10/97
SR 16, 2/10/97
Executive Action: SB 289, SB 278, SB 266

EXECUTIVE ACTION ON SB 289

Amendments: sb028901.avl - EXHIBIT 1

Motion: SEN. LORENTS GROSFIELD MOVED TO AMEND SB 289.

Discussion: SEN. GROSFIELD This amendment would move the money from the Crime Victim's Compensation Assistance Account to the General Fund. Their money comes from the General Fund. If the money does not go to the counties under (a) it would then go to the State General Fund.

SEN. GROSFIELD stated the amendment would take care of that situation. This does not say that a person cannot walk past the machines. There needs to be a sign indicating that the activity is there and children are not allowed in the vicinity.

CHAIRMAN CRIPPEN stated that he had a letter from the Montana Lottery in which they proposed an amendment which would state, "For the purposes of this section gambling device does not include any machine or electronic device used in conjunction with the state lottery as defined in this section." They are concerned that grocery and convenience stores will have underaged children at the counter.

SEN. STEVE DOHERTY commented that Section 7 stated "close enough to play or control or participate in the play." The underaged children are loitering and they are close enough to play.

SEN. GROSFIELD did not feel that waiting in line meant loitering. He asked if a lottery device is a gambling device for purposes of Title 23, Chapter 5?

Janice Jessup, Montana State Lottery, stated they would like to see this confined to Title 23, Chapter 5, which would exclude the lottery. She suggested a codification instruction.

CHAIRMAN CRIPPEN asked if the amendment would then say that minors could play the lottery?

Ms. Lane explained that a codification instruction would not be appropriate with this bill. This bill amends a particular statute of existing law. Codification instructions are used when there is a new section of law which is to apply or not apply in certain areas. Section 23-5-158 states that minors cannot participate in gambling activities. By saying a new subsection does not apply to play lottery, the implication is that minors could play the lottery.

CHAIRMAN CRIPPEN felt amendment 7 took care of the problem.

Vote: The MOTION CARRIED. **SEN. HOLDEN, SEN. AL BISHOP, and SEN. ESTRADA** voted no.

EXECUTIVE ACTION ON SB 266

Amendments: sb026601.agp - EXHIBIT 3

Discussion: **Ms. Lane** explained the amendment was presented by **Jerry Driscoll**. This would make a similar amendment in the Title 2, Chapter 18, part 9, which is the state tort claims sections of the law to the amendment made in the insurance code.

Motion: **SEN. MIKE HALLIGAN MOVED SB 266 BE AMENDED.**

Discussion:

SEN. HOLDEN commented that Jacqueline Lenmark's amendment would include Mr. Driscoll's amendment plus other considerations. He asked Ms. Lenmark to explain.

Ms. Lenmark stated that the amendments she had prepared were in the alternative. One represented the trial lawyers' position, one represented the bill as it was currently drafted and one represented a compromise position which has been discussed. Mr. Driscoll's amendment was not included. There are subrogation statutes which mirror each other in three different places in current law.

SEN. HOLDEN asked which amendment was the compromise?

CHAIRMAN CRIPPEN commented that (4) of the second amendment would include no right of subrogation until the injured insured would be fully compensated for the economic damages arising out of his injuries.

Ms. Lenmark explained this would be only economic damages. This would not include pain and suffering, attorney fees, or costs. This would only be actual damages which would include medical expenses, property damage, and future medical expenses.

Mr. Hill stated they could not accept a compromise that goes into new sections of statute that the original bill didn't cover. The amendments regarding economic damages went beyond the original bill and reduce the threshold. He understood the insurance department would be comfortable with the economic damages language in one section of the bill, but not going into other sections of the code.

SB 266 is two different bills. Section 4 is the bill which the independent agents want. They have no objection to Section 3. The first two sections give a right of subrogation against an insured. The fourth section is not limited to subrogating against tortfeasors.

CHAIRMAN CRIPPEN commented that the amendment starting Page 2, line 2 would leave the question open on subrogation.

Ms. Lenmark stated that was to correct the bill as it was originally drafted.

Amendments: EXHIBIT 4

Substitute Motion: SEN. HOLDEN MOVED TO AMEND SB 266.

Discussion:

SEN. HOLDEN felt that this bill needed to pull in the Insurance Commissioner.

CHAIRMAN CRIPPEN objected to amendments which were not put into proper form by the staff attorney.

Motion: SEN. HALLIGAN WITHDREW HIS MOTION.

{Tape: 1; Side: b; Approx. Time Count: 8:45}

Amendments: sbo26601.avl and sb026602.avl-EXHIBIT 5 & EXHIBIT 6

Discussion:

SEN. DOHERTY explained he had two amendments in the alternative. One dealt with being fully compensated for the insured's injuries which was consistent with the current statute - right of subrogation granted for disability. Amendment sb026601.avl mirrors current law for health insurance policies.

CHAIRMAN CRIPPEN stated one amendment dealt with expenses and the other with injuries.

SEN. DOHERTY stated he did not have a problem giving the money to the casualty insurance companies if the insured is fully compensated for his injuries. If the committee did not like the current law, he prepared the back up amendment sb026602.avl which would fully compensate for the insured's expenses. In attempting to fix the right of subrogation, we do not want to make the person who was injured the one to suffer the consequences. If the insurance companies want to fight among themselves, that's fine. However, he does not want the insured in the middle of that.

Ms. Lenmark stated they do not support the full recovery. They would support the expenses or economic damages language. They would prefer the economic damages language.

CHAIRMAN CRIPPEN stated that would not be as inclusive as expensive. Insured's injuries would be the fullest umbrella. The next would be expenses. He asked to have the amendments put in proper form.

Motion: SEN. HOLDEN WITHDREW HIS MOTION.

HEARING ON SB 318

{Tape: 1; Side: b; Approx. Time Count: 9:04}

Sponsor: SEN. TOM BECK, SD 28, Deer Lodge

Proponents: Keith Colbo, Montana Independent Bankers
Page Dringman, Montana Chamber Liability Coalition
Frank Stock, Polson Banker
George Bennett, Montana Bankers' Association
Steve Turkiewicz, Montana Auto Dealers' Association

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BRUCE D. CRIPPEN, on February 17, 1997, at 8:00 a.m., in the Senate Judiciary Chambers (Room 325) of the State Capitol, Helena, Montana.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Jody Bird, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 341, posted February 14
Executive Action: SB 231, SB 247, SB 255, SB
✓ 266, SB 291, SB 303, SB 314,
SB 318, SB 321, SB 327, SB 341

EXECUTIVE ACTION ON SB 266

Discussion: Roger McGlenn. The interested parties met in the Insurance Department on Friday afternoon and tried to work toward a mutually acceptable position on this bill. They wanted to meet again today if you didn't take executive action. There was movement, but not total agreement yet. Russell Hill. My impression of the meeting was that the majority of folks there agreed basically that there were certain elements of the bill that everybody could accept. They need to determine how big a

problem Sections 1 and 2 are. **CHAIRMAN CRIPPEN.** I will give you until tomorrow then.

EXECUTIVE ACTION ON SB 291

Discussion: **CHAIRMAN BRUCE CRIPPEN.** I was considering asking Valencia Lane to propose an amendment to eliminate the laundry list if we could do it within the title, but I decided not to. The Texas bill says 'if you can show malicious actions toward a group' - it doesn't have race, color, creed and all that. It is a fairly new law and hasn't had any court cases yet (**EXHIBIT #1**).

SEN. SHARON ESTRADA. I would be willing to go along with this.

SEN. SUE BARTLETT. What did the law review say? **CHAIRMAN CRIPPEN.** Basically, they looked more to the constitutionality of the law.

SEN. STEVE DOHERTY. Under our statutes, the prosecutor can charge with that crime, if it's included. How would this work, because you couldn't really bring a charge. Is it a sentence enhancement? **CHAIRMAN CRIPPEN.** Yes, it would go up to the next level.

SEN. DOHERTY. Would you have a separate trial on whether or not your garden variety assault met certain criteria, and that would be a hate crime? **Valencia Lane.** It's all done in the punishment phase of the trial for the underlying offense.

SEN. DOHERTY. So, the underlying offense is still going to be assault and if directed at a particular group, then they get an extra crime tacked on their sentence.

Valencia Lane. The Texas law is about two or three sentences, and under it is sentence enhancement only. There is no underlying crime of malicious harassment. Some things that would be criminal and punishable under Montana statute, would not be so under the Texas statute. For example, burning a cross on your own lawn would not be a crime under the Texas approach, even though your next door neighbor might be black.

SEN. BARTLETT asked Valencia Lane to get copies of the Texas law for the Committee.

VICE CHAIRMAN LORENTS GROSFIELD. Someone did a study - the Montana Advisory Commission on Civil Rights. Their findings basically say that not a single hate crime has been reported in this state, which makes me think that the statute doesn't work the way it is now. I'm intrigued by this Texas approach.

If the things that a lot of the witnesses were complaining about were crimes of assault, and there are remedies under current law, if the Texas approach goes under current law, and if you can establish it was a hate crime, we will enhance the penalty. This

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BRUCE D. CRIPPEN, on February 18, 1997, at 9:06 A.M., in Senate Judiciary Room.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Judy Keintz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 368, 2/15/97
SB 369, 2/15/97
Executive Action: SB 368, ~~SB~~ 266, SB 303, SB 291

HEARING ON SB 368

Sponsor: SEN. J.D. LYNCH, SD 19, Butte

Proponents: David Brown, Executive Director of the Montanan
Independent Machine Operators Assoc.
Larry Aike, Montana Coin Operators Assoc

Opponents: None

Opening Statement by Sponsor:

{Tape: 1; Side: A; Approx. Time Count: 9:06}

Vote: The MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 266

Amendments: sb026606.av1 - EXHIBIT 6

Discussion: Ms. Lane asked Jackie Lenmark to explain her amendments. She reminded the committee that these were the sixth set of amendments on this bill. Three were submitted by Ms. Lenmark in the alternative, one set came from the Trial Lawyers and one from Jerry Driscoll.

Ms. Lenmark stated she was also speaking on behalf of HIAA, Blue Cross/Blue Shield, NAIL, State Farm, the Alliance of American Insurers and Montana Medical Benefits Plan. There have been meetings between the insurers, independent agents and the Insurance Commissioners Office. They have not reached consensus. The amendments are endorsed by the insurers. Subrogation is difficult for lay persons as well as lawyers. When there is a loss and an insurance company pays for that loss, the insurance company through the theory of subrogation will pursue the wrongdoer. That is the theory of subrogation. The amendments create and correlate a subrogation right for three kinds of insurance: property and casualty insurance for which there has been no statutory right, disability or health insurance for which there has been a subrogation right, and health service corporations for which there has been a statutory right.

Amendment no. 5 corrects a codification in the original bill draft. Section 3 of the original bill needs to appear in all three chapters. Amendments 2, 3, and 4, make the rights of each type of insurance the same. No particular line of insurance has a greater subrogation right than another. If you have several lines of insurance involved in an accident, it is important to get money to the injured person quickly. The injured person's med pay would pay immediately. The health insurance company would start paying medical bills. Once there has been a determination of liability, the casualty company would compensate the injured person. Without the right of subrogation, the health insurance or med pay insurance may be reluctant to pay immediately because they have no opportunity to recover those funds from the tortfeasor, the liable party's insurance company. They inserted the language on arbitration so that if there is a dispute amongst insurers and an insured about the extent of recovery, the injured person will have recovery and the person who is truly liable will be responsible for payment.

Motion: SEN. RIC HOLDEN MOVED TO AMEND SB 266.

Discussion: SEN. STEVE DOHERTY asked for comment from the independent insurance agents and the trial lawyers.

Russell Hill, MTLA, stated the amendments do not solve the problems in Section 1 and 2 but, in fact, extend those problems

to other sections of the code which were not in the original bill. This subrogation would not be limited to tort actions and third-party liability. The insurance companies object to any standards. Health insurers would have a subrogation right against the policyholder for lost wages, etc.

Roger McGlenn, Independent Insurance Agents Assoc., stated their major concern was to address the Reaglor decision and the Youngblood decision which prohibited subrogation of medical payments under the auto policy. Their concern is Section 4 of this bill. This would establish the right of subrogation. He had a set of amendments which would strike Sections 1, 2, and 3 of the bill and would leave Section 4 of the bill. **EXHIBIT 7.**

SEN. DOHERTY asked **Mr. McGlenn** if they would be happy with the bill if the amendments were adopted?

Mr. McGlenn stated that there was HB 103 which dealt with order of payment which they feel would be a significant companion issue to this which would establish who paid and when they paid. It would also provide the right of subrogation

Substitute Motion: **SEN. DOHERTY MOVED SB 266 BE AMENDED. (EXHIBIT 7).**

Discussion: **SEN. DOHERTY** explained this would strike sections 1, 2, and 3 and leave section 4 of the bill.

SEN. HALLIGAN asked **SEN. GERRY DEVLIN** if he approved of the amendment?

SEN. DEVLIN stated that it was fine with him.

SEN. GROSFIELD asked if in amendment 3, inserting the word "policy" after casualty, was necessary?

Ms. Lane stated it should be there. The next amendment strikes "or disability policy or health service corporation contract" which would leave "or under another casualty."

SEN. GROSFIELD asked for comments from **Mr. Hill** and **Ms. Lenmark**.

Mr. Hill explained that at a meeting of all the parties, the insurance companies indicated that without sections 1 and 2 they would kill this bill. **Mr. McGlenn** understands that what he wants most out of this bill may be sacrificed by the amendments he has offered. They have no objections to section 3 and 4 of the bill.

Ms. Lenmark stated that without section 1 and 2 in the bill, they will be no effective right of subrogation. The insurance companies did express an intent to kill the bill if it went out of committee in that form because it does not give any right of subrogation to property/casualty companies and creates a legal problem.

Vote: The MOTION CARRIED on roll call vote with SEN. HOLDEN, JABS and GROSFIELD voting "no".

Motion: SEN. HALLIGAN MOVED SB 266 DO PASS AS AMENDED.

Discussion: SEN. GROSFIELD commented that this amendment included that the correct changes to the title be made and that Section 5 be deleted.

SEN. HOLDEN asked Mr. McGlenn how this bill would work?

Mr. McGlenn stated the goal of the independent agents was to make the tortfeasor pay and prevent duplicate payments for the same line of coverage. Under an auto liability policy, there is a negligent act of a third party. Their sincere intent is that an insurer will be able to subrogate back against the insurer of a negligent third party.

SEN. DOHERTY stated that insurance agents had a problem explaining to people who bought insurance from them what the situation was in a casualty policy. The amendments address their problem. During the testimony on this bill, it was revealed that disability policies and health service corporations already have a right of subrogation. The door was opened a little and a lot of horses tried to get into this parade. The amendments address the issue which was brought.

SEN. REINY JABS asked if this bill helped at all?

SEN. DOHERTY said they are solving the problem of this issue brought before them. The other amendments are other issues entirely. Last time he checked, the insurance industry could not kill bills.

SEN. JABS asked Ms. Lenmark if she was in favor of the amendment?

Mr. Lenmark stated that with the amendments currently on the bill, she and the other insurers are opponents.

SEN. HOLDEN asked why she would be an opponent?

Ms. Lenmark stated there already exists a statutory right of subrogation but it may not be exercised until the injured person has fully recovered and the court has interpreted that full recovery to include all damages, including pain and suffering and attorney fees and costs. Blue Cross cannot recover what it has paid for medical bills until a party has recovered all other damages. That was the purpose of section 1, 2, and 3 and making those sections read the same in each chapter of the insurance code so that no insurance company has a different right. The law will now read that health insurers will still have a right of subrogation but not until full recovery. Rarely will the injured person get to full recovery because they pay up to one half of their recovery to their attorney.

Vote: The MOTION CARRIED on oral vote.

EXECUTIVE ACTION ON SB 303

Motion: SEN. HALLIGAN MOVED SB 303 BE TAKEN FROM THE TABLE.

Discussion: SEN. HALLIGAN commented they are to the point where the technology has reduced the cost to where it can be a viable option for dealing with DUIs. The judge has a discretion to order it.

Vote: The MOTION CARRIED with SEN. HOLDEN and ESTRADA voting no.

Motion: SEN. HALLIGAN MOVED SB 303 DO PASS AS AMENDED.

Discussion: SEN. HALLIGAN stated this makes the offender pay before they get to the fourth defense DUI.

SEN. HOLDEN stated that local governments needed to administer the program. There are problems with the machines not working in subzero weather. People disconnect their machines.

CHAIRMAN CRIPPEN commented that apparently SEN. HOLDEN'S concern is that there is no money provided for local government or the state to pay for the program.

SEN. JABS asked if this bill provided for the judge to force the people to pay for the equipment?

SEN. HALLIGAN stated there was nothing in the bill which would force a justice of the peace that this be a part of the sentence. There are organizations which might fund the equipment. One he could think of was Mothers Against Drunk Drivers.

CHAIRMAN CRIPPEN stated this is not mandatory. It benefits the defendant. If he has a job and wants to drive, he will have to come up with the money.

SEN. HALLIGAN felt that insurance companies have made workplaces safer because of prevention measures. If we can make people safer on the road, this bill will be a benefit.

SEN. MCNUTT stated that this is a tool. The person has lost his drivers license and is not supposed to be driving. Since this is not mandatory, he was in favor of this device.

Vote: The MOTION CARRIED with SEN. HOLDEN and SEN. ESTRADA voting no.

EXECUTIVE ACTION ON SB 291

Amendments: sb029101.avl - EXHIBIT 8

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & LABOR

Call to Order: By CHAIRMAN BRUCE SIMON, on March 28, 1997, at
8:00 AM, in Room 104

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Paul Sliter, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Joe Barnett (R)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Charles R. Devaney (R)
Rep. David Ewer (D)
Rep. Kim Gillan (D)
Rep. Billie Krenzler (D)
Rep. Bob Lawson (R)
Rep. Rod Marshall (R)
Rep. Gay Ann Masolo (R)
Rep. Wes Prouse (R)
Rep. Carolyn M. Squires (D)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)
Rep. Joe Tropila (D)
Rep. Carley Tuss (D)

Members Excused: None

Members Absent: None

Staff Present: Stephen Maly, Legislative Services Division
Pati O'Reilly, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 238; ✓ SB 266; SB 286
(3/5/97)

Executive Action: SB 290; SB 379; ✓ SB 266; SB
286: SB 238; SB 368; SB 350

HEARING ON SB 286

Opening Statement by Sponsor: Senator Crippen, S. D. 10
introduced the bill.

{Tape: 1; Side: 1; Approx. Time Count: .01; Comments: None.}

Proponents' Testimony:

Paul Peterson, State Chairman, MT Coalition of Persons with Disabilities.

{Tape: 1; Side: 1; Approx. Time Count: 14.5; Comments: None.}

Michael Regnier-Chairman of Coalition of People with Disabilities. EXHIBIT 1 AND 2.

{Tape: 1; Side: 1; Approx. Time Count: 17.0; Comments: None.}

Bud Williams, MT Innkeepers Assn.

{Tape: 1; Side: 1; Approx. Time Count: 25.6; Comments: None.}

Al Smith, MT Advocacy Group. EXHIBIT 3.

{Tape: 1; Side: 1; Approx. Time Count: 26.1; Comments: None.}

Jim Brown, Dept. of Commerce, Building Codes Div.

{Tape: 1; Side: 1; Approx. Time Count: 27.0; Comments: None.}

Bud McCarthy, Butte-Silver Bow County Attorney

{Tape: 1; Side: 1; Approx. Time Count: 30.3; Comments: None.}

Opponents' Testimony:None

Questions From Committee Members and Responses:

{Tape: 1; Side: 1; Approx. Time Count: 32.7; Comments: None.}

Closing by Sponsor: Senator Crippen closed.

{Tape: 1; Side: 2; Approx. Time Count: 9.8; Comments: None.}

HEARING ON SB 266

Opening Statement by Sponsor: Senator Devlin, S. D. 2 introduced the bill.

{Tape: 1; Side: 2; Approx. Time Count: 12.0; Comments: None.}

Proponents' Testimony:

Tom Clark, Miles City Insurance Agent

{Tape: 1; Side: 2; Approx. Time Count: 13.7; Comments: None.}

Robin Nelson, Pres. Independent Insurance Agents of Montana

{Tape: 1; Side: 2; Approx. Time Count: 17.2; Comments: None.}

Roger McGlenn, IAAM.

{Tape: 1; Side: 2; Approx. Time Count: 19.1; Comments: None.}

Frank Cote, Dept. Commission, Insurance Division, State Auditor

{Tape: 1; Side: 2; Approx. Time Count: 20.8; Comments: None.}

Greg VanHorrssen, State Farm Insurance

{Tape: 1; Side: 2; Approx. Time Count: 21.2; Comments: None.}

Opponents' Testimony: None

Questions From Committee Members and Responses:

{Tape: 1; Side: 2; Approx. Time Count: 21.7; Comments: None.}

Closing by Sponsor: Sen. Devlin closed. Rep. Ewer to carry.

{Tape: 1; Side: 2; Approx. Time Count: 31.9; Comments: None.}

HEARING ON SB 238

Opening Statement by Sponsor: Senator Devlin, S D 2 introduced the bill.

{Tape: 1; Side: 2; Approx. Time Count: 32.7; Comments: None.}

Proponents' Testimony:None

Opponents' Testimony: None

Informational Testimony:

Anna Miller, EXHIBITS 4 AND 5.

{Tape: 1; Side: 2; Approx. Time Count: 38.2; Comments: None.}

Questions From Committee Members and Responses:

{Tape: 2; Side: 1; Approx. Time Count: .2; Comments: None.}

Closing by Sponsor: Senator Devlin closed.

{Tape: 2; Side: 1; Approx. Time Count: 12.0; Comments: None.}

EXECUTIVE ACTION ON SB 290

Motion: Rep. Krenzler moved do concur SB 290.

{Tape: 2; Side: 1; Approx. Time Count: 13.4; Comments: None.}

Motion/Vote: Rep. Tropila moved to adopt Tropila amendments. Motion carried 18-1.

{Tape: 2; Side: 1; Approx. Time Count: 15.7; Comments: None.}

Motion/Vote:Rep.Tropila moved do concur as amended. Motion carried roll call 10-9.

{Tape: 2; Side: 1; Approx. Time Count: 16.9; Comments: None.}

EXECUTIVE ACTION ON SB 379

Motion: Rep. Devaney moved do concur SB 379.

{Tape: 2; Side: 1; Approx. Time Count: 19.; Comments: None.}

Motion/Vote: Rep. Devaney moved to adopt Devaney amendment.
Motion carried unanimously.
{Tape: 2; Side: 1; Approx. Time Count: 19.9; Comments: None.}

Motion/Vote: Rep. Devaney moved do concur as amended. Motion
carried unanimously.
{Tape: 2; Side: 1; Approx. Time Count: 21.0; Comments: None.}

EXECUTIVE ACTION ON SB 266

Motion/Vote: Rep. Krenzler moved do concur SB 266. Motion
carried unanimously.
{Tape: 2; Side: 1; Approx. Time Count: 21.; Comments: None.}

EXECUTIVE ACTION ON SB 286

Motion: Rep. Tuss moved do concur SB 286. Motion carried
unanimously.
{Tape: 2; Side: 1; Approx. Time Count: 21.8; Comments: None.}

EXECUTIVE ACTION ON SB 238

Motion: Rep. Devaney moved to table SB 238. Motion carried
unanimously.
{Tape: 2; Side: 1; Approx. Time Count: 23.4; Comments: None.}

EXECUTIVE ACTION ON SB 368

Motion: Rep. Masolo moved do concur SB 368.
{Tape: 2; Side: 2; Approx. Time Count: .01; Comments: None.}

Motion/Vote: Rep. Sliter moved to adopt Sliter amendments.
EXHIBIT 6. Motion carried 16-3. Reps. Tuss, Krenzler and Lawson
voted no.
{Tape: 2; Side: 2; Approx. Time Count: .3; Comments: None.}

Motion: Rep. Pavlovich moved to adopt Pavlovich amendments.
EXHIBIT 7.

Discussion: {Tape: 2; Side: 2; Approx. Time Count: 8.6;
Comments: None.}